

## REMARKS

### **I. Restriction Requirement**

The Examiner restricted the claims of the application into the following three groups:

- Group I: claims 1-17 and 52, drawn to a composition of benzoyl peroxide or a salt thereof;
- Group II: claims 18-35, drawn to a method of making a benzoyl peroxide composition; and
- Group III: claims 36-51, 53, 54, and 55, drawn to a method of treatment using a benzoyl peroxide composition.

In response, Applicants elect Group I, claims 1-17 and 52, drawn to benzoyl peroxide compositions, **with traverse**. Applicants traverse the restriction requirement on the grounds that the search and examination of the three groups of claims does not present an undue burden to the examiner.

### **II. Species Election Requirement**

The Examiner also made the following species election requirements if Group I is elected. Applicants make these species elections with traverse. Applicants traverse on the grounds that the search and examination of all of the species does not impose an undue burden upon the examiner. Moreover, the M.P.E.P. provides that a reasonable number of species can be searched in one application. Applicants presume that the species election is made to assist the Examiner in searching the invention, and that the Examiner will follow the procedures delineated in MPEP 809.02(c).

#### **A. Crystal Type Election**

Applicants must elect a single crystal type from the following:

a crystalline phase, an amorphous phase, a semi-crystalline phase, a semi-amorphous phase, and mixtures thereof

In response, Applicants elect, with traverse, “a crystalline phase”.

**B. Particle Size Species Election**

Applicants must elect a single particle size from the following:

less than about 1900 nm, less than about 1800 nm, less than about 1700 nm, less than about 1600 nm, less than about 1500 nm, less than about 1400 nm, less than about 1300 nm, less than about 1200 nm, less than about 1100 nm, less than about 1000 nm, less than about 900 nm, less than about 800 nm, less than about 700 nm, less than about 600 nm, less than about 500 nm, less than about 400 nm, less than about 300 nm, less than about 250 nm, less than about 200 nm, less than about 100 nm, less than about 75 nm, and less than about 50 nm

In response, Applicants elect, with traverse, "less than about 1900 nm".

**C. Dosage Form Election**

Applicants must elect a single dosage form from the following:

liquid dispersions, powders, lyophilized form, sprays, ointments, creams, gels, lotions, liquid washes, controlled release dosage form, delayed release dosage form, extended release dosage form, pulsatile release dosage form, mixed immediate release and controlled release dosage form, or a combination thereof.

In response, Applicants elect, with traverse, "creams".

**D. Benzoyl Peroxide Concentration Election**

Applicants must elect a single concentration of benozyl peroxide from the following:

the benzoyl peroxide or a salt thereof is present in an amount selected from the group consisting of from about 99.5% to about 0.001%, from about 95% to about 0.1%, and from about 90% to about 0.5%, by weight, based on the total combined weight of the benzoyl peroxide or a salt thereof and at least one surface stabilizer, not including other excipients.

In response, Applicants elect, with traverse, "about 99.5% to about 0.001%".

**E. Surface Stabilizer Concentration Election**

Applicants must elect a single concentration of surface stabilizer from the following:

the at least one surface stabilizer is present in an amount selected from the group consisting of from about 0.5% to about 99.999% by weight, from about 5.0% to about 99.9% by weight, and from about 10% to about 99.5% by weight, based on the total combined dry weight of the benzoyl peroxide or a salt thereof and at least one surface stabilizer, not including other excipients.

In response, Applicants elect, with traverse, "about 0.5% to about 99.999% by weight".

**F. Identify of Surface Stabilizer Election**

Applicants must elect a single surface stabilizer from those presented in claims 8, 10, 11, 12, and 13. In response, Applicants elect, with traverse, "non-ionic".

**G. Active Agent Election**

Applicants must elect a single active agent from the lists presented in claims 16, 17, and 52. In response, Applicants elect, with traverse, "antibiotics."

**III. Conclusion**

The present application is now in condition for allowance. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 CFR §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date December 5 2006

By Michele M. Simkin

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5538  
Facsimile: (202) 672-5399

Michele M. Simkin  
Attorney for Applicants  
Registration No. 34,717